

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

CLAIR LOVERIDGE,

Petitioner,

v.

**Civil Action No. 1:06cv6
Criminal Action No. 1:03cr63-1
(Judge Keeley)**

UNITED STATES OF AMERICA,

Respondent.

**OPINION/REPORT AND RECOMMENDATION ON
PETITIONER'S MOTION FOR DEFAULT**

This § 2255 action is before the undersigned for a report and recommendation on the *pro se* petitioner's motion for default. In the motion, the petitioner requests default judgment against the United States for its failure to timely file a response to the petition.

A review of the record shows that the petitioner initiated this action on January 6 2006. On May 22, 2006, the undersigned conducted a preliminary review of the file and determined that summary dismissal was not appropriate at that time. Therefore, the respondent was directed to file a response on or before June 19, 2006. The respondent filed a response on June 29, 2006.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . and that fact is made to appear by affidavit or otherwise, the Clerk shall enter the party's default." However, "[n]o judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." Fed.R.Civ.P. 55(e).

In this instance, the respondent did not fail to plead or to defend. Rather, the respondent filed a response approximately ten (10) days out of time. The petitioner has not shown that he was prejudiced by the delay. Moreover, based on the subsequent report and recommendations issued by the undersigned, the petitioner cannot establish a right to relief. Accordingly, the undersigned recommends that the petitioner's Motion for default (dckt. 7) be **DENIED**.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable Irene M. Keeley, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket, and to counsel of record via electronic means.

DATED: June 18, 2008.

John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE